

DELTA PROTECTION COMMISSION

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August 11, 1995

To: Delta Protection Commission
From: Margit Aramburu, Executive Director
Subject: Ideas for Commission Consideration of Commission
Continuation

Background:

The Commission is slated to sunset on January 1, 1997. It takes about one year for legislation to be submitted, heard in Committee, be voted upon by both houses, and signed into law. New legislation to continue the Commission would have to be prepared and submitted this fall, fall of 1995.

Possible Approaches:

The Commission could take one of several different approaches as outlined in the Implementation Report prepared by the Attorney General's office:

1. Continue the Commission as Constituted.

Simply extend the sunset date of the existing legislation out a specific number of years (4, 5, 10) to allow the Commission to continue and complete its mandated work.

2. Continue the Commission, with Changes.

Change the make-up of the Commission membership; make other minor changes.

3. Expand the Use of Voluntary Interagency Agreements.

This would be a sort-of super DAPC; a new COG created by the Legislature; or other option.

4. Create a New Appellate Body.

Assuming the Commission's planning responsibilities are completed, create a new, probably smaller body, 5 to 7 members, to hear appeals.

5. Create a New Conservancy-Type Agency to Carry Out the Plan.

Craft a new agency with different responsibilities to take the place of the existing Commission, e.g. property acquisition and management; easement acquisition and management; mitigation banking; voluntary land management agreements.

6. Allow the Commission to Sunset.

Funding Ideas:

Funding has continued to be a challenge. The Commission developed several ideas for long-term funding which have not been pursued. The Commission is currently funded year to year through special funds (Environmental License Plate Fund, Boating and Waterways Fund and Water Fund). The 10% penalty authorized in the Delta Protection Act resulted in approximately \$3,500 last fiscal year; penalty funds would be an unreliable source of funding. Ideas studied but not acted on by the Legislature include: a special Delta license plate, or "capture" of part of royalties generated by State Land oil and gas leases in the Delta. (See attached memos.)

Possible Alternatives for Commission Action:

1. The Commission could consider these matters, take a position, and then hold public hearings and ask for public support of its position.
2. The Commission could create a subcommittee to consider options and report back to the full Commission for action.
3. The Commission could hold public hearings, particularly in different geographic locations regarding future options, then after the public hearings, make a decision.

Enclosures

IMPLEMENTATION

The Delta Protection Act of 1992 established the Delta Protection Commission, a new State entity to plan for and to guide the conservation and enhancement of the natural resources of the Delta, while sustaining agriculture and meeting increased recreational demand. The Act defines a Primary Zone, which comprises the principal jurisdiction of the Delta Protection Commission. The Secondary Zone is the area outside the Primary Zone and within the "Legal Delta"; the Secondary Zone is not within the planning area of the Delta Protection Commission. The Act requires the Commission to prepare and adopt a Land Use and Resource Management Plan for the Delta, which must meet specific goals.

For purposes of implementation issues, the Commission's duties may be characterized as including planning, conservation, and coordinating functions. The Act provides broad authority to the Commission to plan for the stated legislative goals of maintaining agricultural lands and natural resources in the Delta, while increasing recreation opportunities and public access.

In order to achieve these important goals, as measured against current baseline conditions, the Legislature has determined that local plans and decisions must be in conformance with the Commission's Plan and local decisions will be subject to appellate review by the Commission. The use of and consistently applied policies, subject to administrative review for conformance with the Act and Plan, will be helpful in achieving the goals of orderly and balanced conservation and development of Delta resources.

In view of the "sunset" clause in the Delta Protection Act, as to options for agency structure, the Commission may consider whether to recommend continuing in its current form, continuing in a revised form, and/or forming a separate or companion agency, such as a Conservancy or a resource conservation district, and/or let the "sunset" clause take effect.

Options available to the Commission to achieve the goals set forth in the Delta Protection Act of 1992 include:

A regional database with baseline conditions and a resource management plan with sufficiently specific standards and criteria in order to measure change, to evaluate progress, and to prepare the required annual reports to the Legislature.

A continuing planning effort, including review of local General Plan proposals, preparation of Plan updates, and consideration of future General Plan amendments in order to assure an effective, accurate, and dynamic resource management plan.

Continuing oversight of local development approvals as a means of assuring consistent implementation of the Commission's Plan, a function currently served by the Commission's appellate review duties.

An acquisition and management strategy for the voluntary acquisition of appropriate interests (conservation easements) in real property and for efficient management and economical support for related agricultural activities and habitat protection.

Coordination of the activities of various State and local agencies and non-profit organizations to provide an integrated stewardship scheme for Delta resources, to coordinate marina patrol activities, and to provide a database to facilitate resource protection, recreational uses, and sustained agricultural activity in the Delta.

From these many options that are available, numerous combinations are possible. In addition to the various elements of the Commission's Plan, the Commission could create partnerships with existing agencies and organizations, or the formation of new entities, would be helpful in achieving the goals of the Act. The Commission may recommend strengthening its planning and review functions, or emphasizing conservancy functions, or both. The Commission's recommendations can inform legislative consideration and review of the Act, which will be prompted by its "sunset clause".

A. Description of Local Government Responsibilities under the Delta Protection Act of 1992.

1. Prepare and Submit Local Plan. Within 180 days of the adoption of the regional plan, all local governments shall submit to the Commission proposed amendments which will cause their General Plans for the areas in the Primary Zone to be consistent with the criteria in Section 29763.5 (see below)(Section 29763).

The local governments can adopt the language in the Commission adopted Plan as a special area plan for the Delta area of the County, the local governments can identify which policies in their existing General Plans carry out the policies in the Commission adopted plan, or can prepare and submit a special area plan of their own for the Delta area of the County.

The Commission's adopted Plan is intended to be used as a guide to the local governments to ensure that certain policy areas are addressed within each local government General Plan and to ensure that uniform policies are adopted Delta-wide for certain policy areas.

The local governments must ensure that when adopted, the General Plans, and any development approved or proposed that is consistent with the General Plan, will be consistent with the regional plan and will not (Section 29763.5):

- result in wetland or riparian loss;
- result in degradation of water quality;
- result in increased nonpoint source pollution;
- result in the degradation or reduction of Pacific Flyway habitat;
- result in reduced public access, provided the access does not infringe on private property rights;
- expose the public to increased flood hazard;

- adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public private nuisance on public or private land;
- result in the degradation or impairment of levee integrity;
- result in increased requirements or restrictions upon agricultural practices in the Primary Zone.

These are also the criteria the Commission will use to evaluate the plans submitted by the local governments.

2. Amend Local Government General Plans. Upon approval by the Commission of the proposed General Plan amendments of the local governments, the local governments shall adopt the proposed General Plan amendments within 120 days of that approval.

The Delta Protection Act amends Section 21080.22 of the Public Resources Code to exempt the "activities and approvals by a local government necessary for the preparation of General Plan amendments" from the California Environmental Quality Act.

3. Local Government Implementation of the Act. Prior to adoption of the General Plan amendments, local governments that approve developments in the Primary Zone must adopt a series of findings that the development will not result in:

- wetland or riparian loss;
- degradation of water quality;
- increased nonpoint source pollution or soil erosion, including subsidence or sedimentation;
- degradation or reduction of Pacific Flyway habitat;
- reduced public access, provided that access does not infringe upon private property rights;
- expose the public to increased flood hazards;
- adversely impacts agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on private or public lands;
- degradation or impairment of levee integrity;
- adversely impact navigation;
- any increased requirements or restriction upon agricultural practices in the primary zone.

After the General Plan amendments are adopted, the local governments will approve development in the Primary Zone based on the amended General Plans.

B. Description of Delta Protection Commission Responsibilities under the Delta Protection Act of 1992.

1. Adopt Regional Plan for the Delta Primary Zone. The Commission must prepare and adopt, and thereafter review and maintain a comprehensive, long-term resource management plan for land uses within the Primary Zone of the Delta by October 1, 1994 (Section 29706(a)).

2. Review and Act on Proposed Local Government General Plan Amendments. The Commission shall act on the proposed General Plan amendments submitted by local governments within 60 days of receiving the proposed amendments. The criteria for approving the proposed General Plan amendments are described in A-1, above. The findings must be written, and based on substantial evidence in the record (Section 29763.5).

3. Meet California Environmental Quality Act (CEQA) Requirements. The Commission must meet CEQA requirements when it approves the General Plan amendments prepared and submitted by local governments (Section 21080.22).

4. Maintain Appeal Authority. As set out in Section 29770 of the Act, the Commission currently has and will continue for the term of the legislation, to have appeal authority for "any person aggrieved by any action taken by a local government in implementing the regional plan or otherwise taken pursuant to this division". The Commission has adopted regulations governing such appeals. If an appeal is accepted, the local action is suspended until the Commission completes its review of the appealed matter. Upon remand, the local agency may modify the permit or approval and resubmit the matter for review to the Commission. The permit or approval shall not be effective until the Commission adopts written findings based on substantial evidence in the record that the permit or approval is consistent with the regional plan and the approved local General Plan.

5. Sunset. The current legislation will "sunset" or cease to exist on January 1, 1997.

C. Development of Long-Term Implementation of Goals of Delta Protection Act of 1992

1. Study Alternatives for Long-Term Implementation. The Commission should consider holding a workshop and public hearing on the "tool box" of alternatives described in the Background Report on Implementation, prepared for the Commission by the Attorney General's office. The ranges of alternatives set out in the report include: sunset, extension of the existing legislation, creation of a different commission with a mission to carry out the goals of the original act, and other alternatives.

2. Prepare Goals for New Legislation. If the Commission develops concepts for future legislation, adopt materials to forward to the Governor and the Legislature. Legislation to be enacted prior to the January 1, 1997 sunset date would need to be submitted in late 1995 for consideration during the 1996 session of the Legislature.

D. Recommendations

1. Establish the Delta Plan as the regionwide policy to preserve, protect, enhance, and restore Delta resources. Because the Delta is a unique and valuable resource area in which all the people of the State have a substantial and continuing interest, and because the wise use, conservation and enhancement of the Delta natural resources are of great concern to the people of California, it should be the policy of the State to recognize, preserve, protect and, where possible, enhance the resources of the Delta for the use and enjoyment of current and future generations.

2. Ensure the actions of the five Delta Counties, and other local governments proposed work in the Primary Zone, are consistent with the Delta Plan. The local governments are charged with regulatory authority in the Delta. Those regulatory responsibilities should be carried out in conformity with the Delta Plan. Should Cities propose to expand into the Delta Primary Zone, or acquire land in the Primary Zone for utility or infrastructure facility development, those actions should be carried out in conformity with the Delta Protection Act of 1992.

3. Continue to give the local governments with jurisdiction in the Delta Primary Zone responsibility for carrying out the Delta Plan through an amended County General Plan. Once the Plan has been adopted and the local governments have reviewed their General Plans for consistency with the Plan and amended the General Plans, the local governments should have primary responsibility for carrying out the Delta Plan.

4. Continue limited State responsibility for carrying out the Delta Plan through the appeal authority of the Delta Protection Commission. The Delta Protection Commission should continue to exercise its appeal authority over local government activities as delineated in the Delta Protection Act of 1992.

5. Develop a monitoring data base to review progress in achieving the objectives of the Delta Protection Act of 1992. The data base will provide information needed to evaluate the effectiveness of the regional plan in preserving agricultural lands, restoring Delta habitat, improving levee protection and water quality, and providing increased public access and recreational opportunities. This information must be provided to the Governor and Legislature as part of the annual reports which must be submitted starting January 1, 1995.

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December 3, 1993

To: Delta Protection Commissioners
From: Margit Aramburu, Executive Director
Subject: Long-Term Funding Plan

Background

The Act mandates the Commission to prepare a long-term funding plan and submit that plan to the Governor and the Legislature on or before December 31, 1993. The plan is to set forth a recommendation for legislation that would provide funding sources to replace the 10% penalty assessment in the Delta Protection Act and to provide sufficient funding for its activities and operations.

Current Budget

The current budget is about \$210,000 including salaries, benefits, rents, day-to-day office expenses and miscellaneous offices expenses (copying, postage, paper, envelopes, phone bills, electric bills), and consultant help.

Future Budget Needs

For fiscal year 1994-95, the budget should be about the same, or lower, depending on program directions of the Commission to staff. Still undetermined at this time, are possible additional costs for meeting California Environmental Quality Act requirements.

Long-Term Funding Options

Two ideas for long-term funding identified below will not develop funding until July 1, 1995, at the earliest, using the normal legislative process; both require enactment of new legislation. If the legislation is emergency legislation, which requires two-thirds approval, the legislation can be enacted more quickly.

a. Penalty Assessment. No monies have been collected from the 10% penalty assessment included in the legislation. A letter was mailed all the local courts. However, tickets are not being issued due to cutbacks in the marine patrol, and when tickets are

issued they are not identified as Delta tickets subject to the penalty assessment, and the public is not paying the fines. Due to these administrative problems and due to the lack of funds generated, it seems futile to continue the program as a primary funding source.

b. Environmental License Plate. The environmental license plate concept has been studied by the Finance Subcommittee. Legislation submitted in January of 1994 would become law in January 1995. The Commission would have one year to "sell" 5,000 license plates, the minimum number required. The Commission can set its own price. The first year funds will be largely tapped by the Department of Motor Vehicles to cover costs of setting up the program; cost estimated to be \$190,000 dollars, or \$38 for each of 5,000 license plates. Funds from renewals would begin accruing in January 1997.

Pros: Entirely new source of funds.

Would generate other marketable merchandise which would also generate income.

No taxes or fines; more popular support.

Cons: Long timeline for revenue generation; revenue stream starts in January, 1997.

Lack of staff or organization to sell 5,000 license plates (flyers and advertising).

c. Delta Revenues. A new proposal would be to capture about 17%, \$250,000 out of \$1,500,000, of fees and royalties generated by State Lands Commission leases and gas wells in the Delta. Currently, the monies go to the State general fund. Legislation submitted in January of 1994 would become law in January of 1995; funds would be authorized by Legislature in the 1995-1996 budget process (July 1, 1995).

Pros: Monies generated from State resources in the Delta would be ear-marked for development and implementation of a resource management plan for the Delta.

Legislation would cease at the same time as the "sunset" for the Commission.

Cons: Subject to additional authorization by Legislature.

Would divert monies formerly directed to the general fund.

Other Long-Term Funding Sources

In the long-term, the Commission may be eligible for federal

monies in the form of grants to assist in implementing the Comprehensive Conservation and Management Plan prepared by the San Francisco Estuary Project. Governor Wilson concurred with the plan, with conditions. Congresswoman Nancy Pelosi has submitted legislation for a five year, \$65 million funding and implementation program. Funds would be available in June, 1995.

Interim Funding.

Because each of the two legislative concepts leaves a gap in funding for the Fiscal Year 1994-1995, interim funding is being sought from a variety of special funds. To date, funds have been sought from the Environmental License Plate Fund and other sources.

Recommendation

The Commission should receive the report from the Subcommittee on Budget and Finance, and select an option to forward to the Governor and the Legislature.

DRAFT

May 6, 1994

To: Budget and Finance Subcommittee
From: Margit Aramburu, Executive Director
Subject: Development of a Long Term Funding Plan

The legislation requires the Commission prepare and submit to the Legislature a plan for funding the Commission. The Commission is limited to spending \$250,000 dollars per year on its program. The current year's budget (July 93-June 94) is funded by a loan from the Environmental License Plate fund. The legislation also mandates a surcharge on fines to be collected and forwarded to the Commission; an optimistic estimate of revenue generation through that program is \$5,000 to \$10,000 per year. An additional \$50,000 has been designated for the Commission; that money is a fine levied by San Joaquin County courts.

The sources of money for the Commission could include: general funds, gifts, donations, penalties, fees, fines, taxes, etc. Some would require legislation; some will require expenditure of funds first. A list of ideas follows:

General Funds:

Unlikely, due to current budget constraints.

Funds/Taxes:

Fee added to boat registration fees for boats licensed within the Delta.

Fee added to boat launch fees.

Levy a 10 cent per cubic yard of dredged material; may limit application to Port, marina, or commercial dredging, and except dredging levee maintenance.

Levy a charge on each acre foot of water exported through the Sate Water Project.

Tax on houseboats rented in the Delta, similar to hotel tax.

Capture a portion of boat gas tax collected in the Delta.

Tolls:

Add a quarter toll to Antioch Bridge toll.

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* Delta License Plate:

Design and have the DMV market Delta license plates; find artist to design the plate and donate services.

Work with other State conservancies to develop a multi-agency plate.

Sell environmental license plates with monies raised designated for Delta projects.

* Revenues from State lands:

"Capture" a portion of royalties generated from natural gas leases in the Delta.

Request that portion of rents generated from lease of State Lands in the Delta be designated for the Commission.

Regional Funding:

With other regional agencies (SACOG, SJCOG), investigate voluntary income tax and property tax checkoffs, a regional property transfer tax, and a surcharge on utilities used in the region.

Grants:

Pursue grants from various Foundations and Non-Profits and federal government.

Fund-Raising:

Through a non-profit partner pursue poster sales, bumper sticker sales, T-shirt sales, book sales, and direct mail solicitation.

State Special Funds:

Pursue funding from State special funds.

Special Event:

Have a large fund raiser once a year for example "Willie Nelson sings to Save the Delta".

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Use "Stamps":

Require boats and cars that use Delta waterways and roadsides for recreational purposes purchase a "stamp" for a fee. "Stamps" could also be available on a voluntary basis.

- * Ideas adopted by Commission and forwarded to Governor and Legislature, as requires in Delta Protection Act.